IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6641 OF 2003

Brigadier Sunder Haridas Mirchandani...Petitioner.

Versus

Sabina @ Aruna Prem Mirchandani
and Others. ... ... Respondents.

Mr. C. R. Dalvi i/by Mr. S. M. Mahamane
for the Petitioner.

Mr. Prashant Berry for Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 18TH MARCH, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for respondent No.1 waives service of rule. By consent of the principal contesting party, Rule made returnable forthwith and taken up for final disposal.

3. The petitioner, original defendant No.1, is aggrieved by the order dated 5th July, 2003 passed by

the 8th Joint Civil Judge, Senior Division, Pune below Application Exhibit 39 in Special Civil Suit No.243 of 2003, allowing defendant Nos.2 and 3 to be joined as parties to the suit on the ground that the suit property "has been transferred by way of franchisee agreement" in their favour and the fact that they are said to be in possession. Learned Counsel for respondent No.1, the plaintiff, fairly states that notice was not issued to the proposed defendants before they were joined. He does not dispute the requirement that such a notice ought to have been issued to the proposed defendants.

4. In this view of the matter, the impugned order dated 5th July, 2003 is hereby set aside. The respondents shall be at liberty to move an application for joinder of any person as a party to the proceeding. The trial Court shall consider that application after issuing due notice to the proposed defendants.

5. Rule made absolute in the above terms. This petition is, accordingly, disposed of. No order as to costs.

Sd/-

(**S. A. BOBDE, J.**)